

Meeting the requirements of 86 Ill. Adm. Code 130.425(a) –(b), traded-in tangible personal property of the like kind or character allows for a credit toward the final selling price of the tangible personal property purchased. (This is a PLR.)

June 22, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of May 10, 2001 and your email dated May 9, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to PERSON for this issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither PERSON nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I am writing to request a Private Letter Ruling regarding the assessment of Sales Tax on a retail sale involving a trade-in. I have spoken to several members of the Revenue Division by telephone regarding this matter and was instructed to seek a written ruling.

The situation is as follows: I purchased a new harp on May 2, 2001 at a list price of Eight Thousand and Five Hundred Dollars. I traded-in a harp, previously purchased in January, 1998, and received a trade-in credit of Three Thousand Dollars. Thus the 'selling price' of the harp being purchased was Five Thousand and Five Hundred Dollars.

COMPANY assessed a sales tax of Seven Hundred Forty -three Dollars and Seventy-five Cents based on the list price of \$8,500.00 and a sales tax of 8.75%. I contend that the tax should be assessed on the actually selling price of \$5,500.00. The Revenue Division employees with whom I discussed this via telephone concurred that the trade-in exemption applied as the property traded in this instance (a harp for a harp) was of like kind and character and the used harp was subject to sales tax upon resale.

I have tried to resolve this matter with EMPLOYEE to no avail. He insists that he is correct in assessing the sales tax on the List price and that a trade-in exemption is not permitted under the Revenue Code except for motor vehicles and farm equipment. I believe he is in error in his interpretation. but he is adamant that he will do nothing without a Private Letter Ruling in this matter.

As a separate issue from the trade-in exemption, I was assessed a rate of 8.75%. I believe that as a resident of CITY and not a resident of CITY2, I should be assessed a rate of 7.75%.

I appreciate your attention to this request.

DEPARTMENT'S RESPONSE:

If a transfer of tangible personal property involves traded-in property of a like kind or character, 86 Ill. Adm. Code 130.425 governs the amount of tax imposed on the transaction. The provisions of 86 Ill. Adm. Code 130.425(a) provide that "gross receipts" mean the selling price or amount of sale connected to a transaction. Under this section, the selling price or the amount of sale constitutes any consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than that hereafter provided, and services. However, this does not include the value of a credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold. In such a situation, when a person trades in tangible personal property he receives a credit for traded-in property of like kind or character. As a result, the value of the traded-in credit reduces the selling price of the item being purchased.

Property of a like kind and character includes, but is not limited to, the trading of any kind of motor vehicle on the purchase of any kind of motor vehicle, the trading of any kind of farm implement, or concerning this instance, the trading of a harp on the purchase of any kind of harp. See, 86 Ill. Adm. Code 130.425(b).

Based upon our review of the facts enclosed with your letter ruling request, it is the Department's position that there has been an overcollection of tax assessed by COMPANY in your purchase. The trade-in credit of \$3,000.00 reduces the taxable selling price of the COMPANY harp to \$5,500.00. Sales tax should be calculated upon this selling price.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Only persons remitting tax to the Department are authorized to file such claims. No credit shall be given to the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b). Taxpayers should not make adjustments on their next return or amend the return for the period in which the overpayment occurred.

Under Illinois sales tax laws, retailers are not required to file claims for credit. Further, the Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

It appears, based on the limited information in your letter, that the tax rate of 8.75% is correct. As a general rule, the rate of tax is determined on the basis of the location at which the retailer accepts the purchase order for the item of tangible personal property he's sold, rather than where the item of tangible personal property is delivered. See, 86 Ill. Adm. Code 270.115.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the

material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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